

EXHIBIT 1

**Texas Association of Broadcasters**

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Ann Arnold, Executive Director

May 6, 1994

Mr. Roy Stewart
Chief, Mass Media Bureau
The Federal Communications Commission
1919 M Street NW
Washington D.C. 20554

Dear Mr. Stewart:

The Texas Association of Broadcasters (TAB) submits this letter in support of the petition of the National Association of Broadcasters, filed on March 3, 1994, seeking reconsideration and clarification of the FCC's January 31, 1994, Policy Statement on assessing forfeitures for EEO violations. The Policy Statement does more than merely give guidance regarding the amount of forfeiture to hand out when a violation has been found. It "also provides guidance on what situations may generally lead to such a forfeiture." Policy Statement, P6. Thus, the Policy Statement actually sets out a new definition of what constitutes an EEO violation.

TAB is particularly concerned about two aspects of the Commission's Policy Statement. First, there is the retroactive application of the forfeiture guidelines to pending license renewal applications. Although licensees have been aware of the Commission's emphasis on efforts since 1987, the Commission has never expressed a specific standard which would warrant a violation. In fact, the only criteria for evaluation expressed by the Commission before the latest Policy Statement was in the 1987 Report and Order which clearly stated that efforts would be only a part of the two-step evaluation of a licensee's EEO compliance:

The first step will be to make an initial evaluation of a station's efforts based on *the full range of information available concerning its EEO record*. This evaluation will examine the descriptions of the station's EEO program and policies as submitted on its Form 396 program report, and EEO complaints filed against the station or licensee, the composition of the station's workforce as submitted on its Annual Employment Report, the composition of the available labor force in the station's area, and any other pertinent information that may be available concerning the station's EEO activities.

Report and Order in MM Docket No. 85-350, 2 FCC Red. 3967, 3974 (1987) (emphasis added). Even the second step was merely described as involving "requests that the licensee submit additional information to the Commission concerning the specific areas of its EEO program that appear deficient." No benchmarks were detailed in the 1987 Report and Order or subsequently.

The new Policy Statement apparently turns the Commission's carefully developed EEO standards upside down by placing undue emphasis on efforts. The new Policy Statement establishes a \$12,500 base fine for failure to recruit so as to attract an undefined "adequate" pool of minority applicants, but only a \$6,250 downward adjustment for meeting the Commission's own 50% of parity standard for either hiring or employment. Licensees meeting the 50% of parity standard in both hiring and employment still can be subject to a short-term renewal and/or reporting conditions, simply because they failed to attract an arbitrary number of minority

applicants that the Commission now deems — several years after the fact and with no advance notice — to constitute an "adequate" pool.

Giving retroactive application of the Policy Statement to pending license renewals unfairly subjects licensees to a vague, *ex post facto* standard. Until January 31, licensees had no inkling that they would be subject to a fine for not attracting minority applicants for the 66% of their hires; the Commission's previous directive merely stated "If the initial evaluation indicates that a station's efforts may have been *less than satisfactory*, it will be subjected to a second-step investigation of those areas of responsibility where its efforts appear deficient." 2 FCC Red. at 3974 (emphasis added). Stations should not be penalized for not living up to a benchmark which did not exist during the license term.

Which raises the second point of concern for TAB: diminution of EEO results to merely a mitigating factor. Under the Policy Statement's "guidelines," a station which hires or employs minorities even at 100% of parity — twice the Commission's standard — merely receives a downward forfeiture adjustment of \$6,250. The station could still be fined at least \$6,250 for not attracting an "adequate" pool of minority applicants. Moreover, the station could be sanctioned with a short-term renewal — it only receives a rebuttable presumption for removal of the short-term renewal — even though it is achieving equal employment opportunity at a higher level than anticipated by the Commission.

The stated purpose of the Commission's EEO requirements is "to ensure that licensees of broadcast stations afford equal opportunity in employment." See Report and Order at 3967. The effect of the Policy Statement is to punish licensees who have achieved that result simply because they have not gone through all the new hoops established by the Commission. Indeed, one of the stations fined under the new Policy Statement's guidance had achieved 100% of parity in its hiring but had not maintained adequate records.

Granted, stations which have deficiencies in either results or efforts should be subject to further review and, where appropriate sanctions. TAB does not suggest that stations should be allowed to have *no* EEO program. Indeed, the Report and Order warned that the parity tests were intended to create neither quotas nor a "safe harbor." However, the Commission must recognize that results count at least as much as efforts. Fundamental fairness demands that a station's success in hiring minorities count at least as much as their tallying an arbitrary number of applicants — a number with no relation to the percentage of minorities in the local workforce of population.

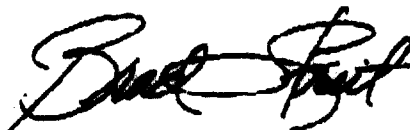
Moreover, there should be a downward adjustment for those licensees who have taken all reasonable — or even extraordinary — steps to attract minority applicants but still have been unable to do so. Otherwise, stations which do their level best to comply with the Commission's efforts requirements are penalized as much as those who make no effort. And stations in areas with minority populations significantly less than 66% are held to a standard that may be unrealistic in spite of the very best efforts they can mount.

For these reasons, we urge the Commission to grant the reconsideration and clarification sought in NAB's petition.

Respectfully,



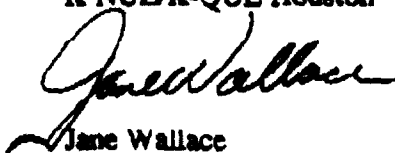
Vesta Brandt
TAB President
K-NUZ/K-QUE Houston



Brad Streit
TAB Vice President
KLTV-TV Tyler



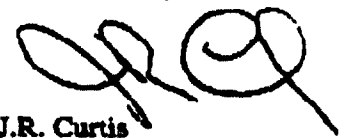
Bill Buchanan
TAB Secretary
KSHN Liberty



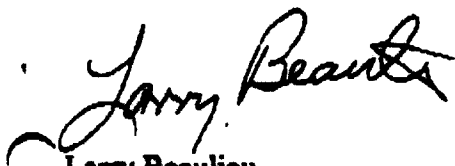
Jane Wallace
TAB Treasurer
KXAN-TV Austin



Jeff Rosser
TAB Legislative Chair
KDFW-TV Dallas-Fort Worth



J.R. Curtis
TAB Past President
KFRO Longview



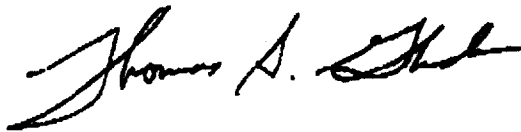
Larry Beaulieu
KFDM-TV Beaumont



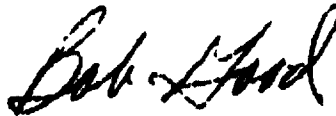
Bill Carter
KIDY-TV San Angelo



Michael Conly
KENS-TV San Antonio



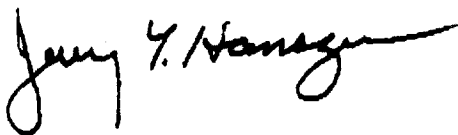
Thomas Glace
KZPS Dallas-Fort Worth



Bob Good
KXXV-TV Waco



Larry Gunter
KYKS Lufkin-Nacogdoches



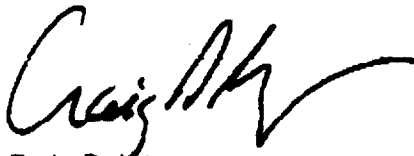
Jerry Hanszen
KGAS Carthage



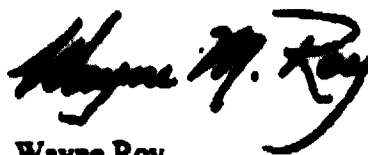
Bill Hill
WOAI San Antonio



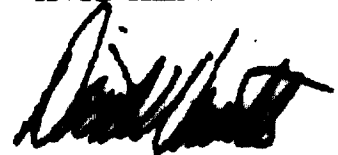
Ken Lane
KVRP Haskell



Craig Rathinger
KKYR Texarkana



Wayne Roy
KTAB-TV Abilene



David Wrinkle
KBST Big Spring

EXHIBIT 2

TEXAS BROADCASTERS' COSTS FOR EEO PAPERWORK

In response to the Federal Communication Commissions' request for comments from broadcasters on costs associated with the FCC's equal employment opportunity rules and guidelines, the Texas Association of Broadcasters surveyed stations across the state about the costs of the administration and paperwork needed to comply.

Radio and television broadcasters estimated the time spent by general managers and their staffs on EEO paperwork and administrative tasks and calculated its dollar value. The stations did not include information on the cost of legal services needed to assess compliance standards, recruitment costs such as paying expenses for individuals brought from outside the market for interviews or routine FCC fees or fines.

A representative sample of Texas 70 radio and 126 television stations indicates Texas broadcasters spend more than \$12 million in staff time on compliance with the EEO rules and paperwork.

One Texas radio station estimates its administrative and paperwork costs at \$69,000 a year.

For major market radio stations the average estimated cost per station is \$37,400.

Reports from television stations, particularly, and a number of the metropolitan market radio stations indicate their costs would be even higher but for the resources available to many broadcasters at this level from their corporate or group organizations and from the larger number of minorities available and wanting to work in bigger markets.

Estimated cost of EEO paperwork per station:

Metro market radio - $\$37,400 \times 124 \text{ stations} = \underline{\$4,637,600}$

Large market radio - $\$31,200 \times 169 \text{ stations} = \underline{\$5,272,800}$

Medium market radio - $\$6,300 \times 169 \text{ stations} = \underline{\$1,064,700}$

Small market radio - $\$350 \times 239 \text{ stations} = \underline{\$83,650}$

Television - $\$9,500 \times 126 \text{ stations} = \underline{\$1,197,000}$

Total = \$12,255,750

Average staff size:

Metro market radio 51

Large market radio 30

Television 92

Medium market radio 15

Small market radio 8

ATTACHMENT B

DECLARATION

I, Ann Arnold, declare under penalty of perjury as follows:

I am the Executive Director of the Texas Association of Broadcasters and have held that position since 1987.

The Texas Association of Broadcasters as a Central Recruitment Source (Attachment B)

To help the Federal Communication Commission investigate the significance and effectiveness of a central recruitment source, the Texas Association of Broadcasters offers itself as a model state broadcast association in the area of maximizing joint efforts of many stations for minority recruitment. NPRM at para. 31. As noted in its comments in the NOI proceeding, TAB is, and always has been, committed to equality in employment. TAB operates an extensive central recruitment source free to member stations and job seekers. TAB suggests that stations participating in its recruitment program should be exempt from the FCC's voluminous record-keeping requirements.

TAB's efforts are headed by a select committee, the EEO Committee, which directs yearly activities that help broadcasters comply with Federal Communication Commissions regulations. The 1996 EEO Committee is chaired by Ernie Jackson, general manager of KMJQ Houston. The activities directed by the committee include four statewide job fairs, five scholarships granted through Texas Broadcast Educators Foundation to broadcast students including at least one specifically targeted for a minority and ongoing efforts to obtain referrals from minority groups and community leaders. This month TAB will publish an EEO guidebook with a step-by-step program and worksheets that stations can use to measure their own minority recruitment. The guidebook also will include everything stations need to participate in TAB's recruitment program as described herein.

I. Mechanisms for maintaining current file

TAB publishes and mails the Job Announcements, a list averaging more than 200 station job openings statewide, to individual prospective employees, and colleges and universities across the state with broadcasting sequences. Special efforts are made to make sure the college counselors at campuses with significant numbers of minorities receive and disseminate the employment information. The Job Announcements also include ads placed by prospective employees. Individuals may place an ad in this listing free of charge which

runs for six publications. The average number of job seekers per publication is 150-200. TAB maintains a file of all past and present job seekers (approximately 2,000) which is available to stations at all times. Once a job seeker finds employment, his or her ad is pulled from the active announcements but kept on file for future use should they seek employment again in the future. Any individual with a job bank listing or a job seeker who does not want a listing but wants information about openings receives mailouts to keep abreast of all job fairs and convention activities year round.

The Job Announcements are

- mailed every other week to an average of 125 prospective employees who send TAB a self-addressed stamped envelope,
- mailed as an insert in the monthly newsletter, the *TABulletin*, to each general manager and personnel director at stations across the state (every month to member stations and on a periodic basis to nonmember stations),
- published on TAB's Internet home page,
- posted on TAB's in-house electronic bulletin board and
- made available by fax on request.

To solicit more announcements for the Job Announcements and ensure a minority pool for stations to choose from, TAB uses many outlets. First, the Job Bank brochure is distributed at every job fair attended by TAB staffers (see Section C2). If a member of the TAB staff is unable to attend a particular job fair (such as the NAB Job Fair in January, 1995) several hundred Job Bank brochures are mailed to the Job Fair coordinator to be distributed at the registration desk. TAB members—stations and/or educators—are solicited to represent the association if a member of the TAB staff cannot attend.

TAB receives approximately 15 calls daily regarding the Job Bank. TAB mails to each caller a Job Bank brochure, a Texas Broadcasting brochure and a copy of the latest job listings.

TAB produced a special brochure and informational video, "Opportunities in Broadcasting," a seven-minute video that profiles behind-the-scenes positions at stations. The tape is used at every job fair and is available upon request to any member station free of charge. This information attempts to take the job seeker beyond the "face" jobs such as disc jockey or "on-air" anchor and lets them see the other rewarding positions at stations. The video was produced by Bob Buckalew, Darrin Robbins and Dave Frederick with help from Austin stations KEYE, KVUE, KEYI, KFON, KHFI and KPEZ.

In addition, TAB constantly monitors statewide newspapers and periodicals for references to minority leaders and organizations and adds them to TAB's EEO database. Then, TAB sends a letter and/or makes a call introducing our services to the person or

organization along with several Job Bank brochures. TAB continually carries out this process.

TAB maintains a communications/university database consisting of the heads of all Texas university mass communication/RTF departments and their placement officers. The data also is augmented with information from the membership rolls of the Texas Association of Broadcast Educators. TAB mails to these individual educators the job announcements, solicitations for new announcements and alerts on upcoming job fairs.

TAB provides a job bank table outside its office doors that is frequented by job seekers at all hours of the day. Should the office be closed, there is always a stack of the most recent job ads as well as a stack of the Job Bank Brochures.

TAB's Internet home page features a special section dedicated to the job bank. The site lists the most up-to-date job openings and people seeking employment in broadcasting. On average 194 people visit TAB's home page daily to peruse the job ads. Individuals and stations may place ads via e-mail to TAB.

TAB maintains an in-house electronic bulletin board where stations can view ads placed by individuals seeking jobs. Stations also may place ads on the bulletin board for TAB to access and publish. In addition, stations can place or request ads via fax.

Tani Dorman, Personnel Director, Stellar Communications, Inc., said the TAB Job Announcements are "one of the most comprehensive ways to find qualified, experienced employees in the state of Texas."

The Job Announcements have about a 90 percent success rate from the people placing ads in the announcements, based on feedback from individuals seeking employment and employers.

II. Broad range of recruitment sources

In addition to TAB's printed and electronically published Job Announcements, through which individuals and stations may place ads, TAB actively seeks out new recruitment sources by attending job fairs and monitoring publications for minority references. TAB's database includes minority Chambers of Commerce, Urban Leagues, universities, community colleges, adult education centers, minority churches, minority associations, political organizations, employment placement services, and a federation of ethnic organizations. TAB includes members of the Texas Legislature and Congress who are minorities or represent areas with significant numbers of minorities, as well as minority-run businesses and law firms. The database, as noted above, is constantly updated.

TAB, in conjunction with the Houston Association of Radio Broadcasters and the Houston Urban League, sponsors annual job fairs targeting minorities that attracted more than 5,000 job seekers in 1995 and 1996. Of those attendees, 800 took job applications and more than 100 placed listings in TAB's free Job Bank.

At its annual convention in San Antonio last year, TAB conducted a one-day career fair that attracted 1,200 additional job seekers—many of them minorities. Area radio and television stations ran public service announcements to alert the public of the upcoming career fair, boosting attendance considerably.

Job seekers visited with 24 Texas stations and broadcast companies to discuss broadcast opportunities in Texas. Stations from all over Texas set up interview tables. Gulfstar Communications, Tichenor Media Systems, and Houston Association of Radio Broadcasters had tables along with KGBT Brownsville, KRGV Weslaco, KDOS/KZTQ Laredo, KNCN Corpus Christi, KENS San Antonio, KWEX San Antonio, KRRT/KABB San Antonio, KONO/KRIO San Antonio/Floresville, KTSA/KTFM San Antonio, KRIV Houston, KBMT Beaumont, KJAC Beaumont, KBTX Bryan, KCEN Temple, KWTX Waco, KLTV Tyler, KFRC Longview, KXAS Dallas-Ft. Worth and KBHT Crockett.

"The minority attendance was outstanding, particularly for the first time," Jackson said.

At the career fair, several informational panel sessions were held for career fair attendees. The first session, "What Broadcasters Want in Employees" was presented by Hugh Barr, general manager, KKYX/KCYY/KCJZ San Antonio; Pat Bodet, production manager, KMOL San Antonio; Bob Belcher, news director, KAND Corsicana; Pat Rodgers, operations director, WOAI San Antonio and Bob Cohen, general manager, KAJA/WOAI/KQXT/KGSL.

At two additional sessions, Ron Oliviera, general manager, KNVA Austin and Ernie Jackson, KMJQ Houston spoke on "Opportunities and Challenges for Minorities in Broadcasting."

"All three sessions were well-attended with a good minority participation as well," Jackson said.

In 1994, TAB conducted a day-long program for minority participants with programs such as "Diversity—A Top Priority for Broadcasters," a keynote address "The Changing Face of Broadcasting" by Jeff Rosser, then general manager of KDFW-TV Dallas, "Where to Start—Small, Medium or Large Market?" roundtable "Meet the Broadcasters" discussions and "Opportunities and Challenges for Minorities in Broadcasting." The panels included minorities who are well known on-air personalities, news anchors and owners of radio and television stations in Texas.

In addition to the fair held in Houston already this year, another one is scheduled for San Antonio in September. Two additional employment recruitment seminars are being planned for Dallas and El Paso in the fall.

Also available to stations free of charge is a legally approved employment application form. TAB uses this form at all job fairs and supplies it to member stations upon request. Attorneys at the law firm of Jackson & Walker reviewed the employment application form to ensure it is legally sound. Members have access to free legal advice on employment issues from Jackson & Walker attorneys.

Through the Texas Broadcast Educators Foundation (TBEF), TAB grants five (5) scholarships annually. Each applicant must be enrolled in a Texas Association of Broadcast Education member college; maintain a grade point average of 2.4 on a 4-point scale or its equivalent and submit a letter from the department head certifying that the applicant has a reasonable chance of successfully completing the course of instruction. Judges consider depth of thought, clarity of expression and commitment to broadcasting as primary factors. Financial need also is considered.

Five scholarships are granted each year in the amounts of \$1,200, \$1,000 and \$700. TAB, in conjunction with the TBEF, has been granting scholarships to broadcasting students since 1978. To date, approximately \$30,000 in scholarship money has been granted to broadcast students.

III. Tailored to needs of individual broadcaster

TAB's job listings are maintained in a database. Each ad carries designations by which staff can search for a broadcaster's specific needs. The job listings themselves are made up of two sections.

The first section lists positions open at radio and television stations across Texas.

The second part of the job listings is made up of prospective employees in Texas. It divides the ads from people seeking employment into eight categories: Administrative/Traffic, Engineering, General, Managerial, On-Air/News, Production/Programming, Sales and Sports.

Stations may request applicants by phone, fax or e-mail in any or all of these categories. Lists of applicants may be mailed, faxed or e-mailed.

IV. Additional contacts if insufficient applicants

Should a station manager fail to find the employee he/she is looking for in the job announcements, several options are at his/her disposal. TAB maintains a file of more than 2,000 resumes from which stations may request additional applicants. The resumes are

collected from job seekers and those placing job announcements and are kept on file until TAB receives a request to remove them. TAB's experience is that broadcast employees change jobs several times over the years and find it to their advantage to keep a resume on file with TAB indefinitely.

When KBST Big Spring could not find an on-air personality willing to relocate to West Texas, the TAB files were combed for every on-air personality's resume. The information was sent overnight to KBST general manager David Wrinkle. The same example holds true for Lynn Woolley of KTEM Temple who was looking for a news director/morning editor, a position very difficult to fill in a small market. Woolley said: "We're a small market station that's doing local news blocks. There aren't many of us left. No smaller stations are training news people to send up to us...it's all but impossible to get anyone to apply at all." TAB staff sent resumes on file overnight to Woolley.

In addition, stations just starting their EEO database may receive a copy of TAB's EEO database, containing more than 350 organizations. Many stations have found this to be a good starting point to form their own database of minority organizations.

V. Broadcaster access to recruitment contacts and applicant flow

As described above, broadcasters have access to TAB's databases and files of recruitment contacts and applicant flows and have actually taken advantage of this availability. In fact, TAB is on the cutting edge in finding ways to make this information available with its access to the Internet and an electronic bulletin board.

The forgoing is true and correct to the best of my knowledge and belief.

July 11, 1996

By

A handwritten signature in cursive script, appearing to read "Ann Arnold", written over a horizontal line.

Ann Arnold

Executive Director

ATTACHMENT C

DECLARATION

I, Ann Arnold, declare under penalty of perjury as follows:

I am the Executive Director of the Texas Association of Broadcasters and have held that position since 1987.

Profiteering In The Name Of Equal Employment Opportunity (Attachment C)

Broadcasters report to me details of their difficulties they encounter in the current process that is intended to promote equal opportunity but in actuality allows some individuals to profit personally by abusing the FCC regulatory scheme. Station owners and managers who relayed the following information to me—in my experience—are responsible, public-spirited, fair-minded individuals who work hard to attract and promote minorities. They are stunned and embarrassed to find themselves accused of violating equal employment opportunity guidelines. Because of their embarrassment and concern that their valid protests will be misconstrued—and perhaps out of an unwarranted fear of potential retaliation—they report incidents to me that they never complain about publicly. So I will relay the reports I have received which I have every reason to believe and in many cases received documentation to substantiate. I omit the names of the individuals and the stations only because I received the information under a pledge of confidentiality.

People alleging discrimination rarely, if ever, file petitions to deny with the FCC. Rather, the Commission hears from one or two law firms that have taken on the self-appointed role of private attorneys-general in filing a blizzard of petitions to deny at renewal time. Such private attorneys-general are more like bounty hunters because while they claim they are acting in the public interest, they are really in it for themselves.

These bounty hunters don't start with hard evidence of actual discrimination. Rather, they simply review the last two Forms 395-B filed by broadcasters with the Commission to find stations which numerically appear to have low minority employment. The bounty hunters then contact a local organization in the station's area (one of the same organizations that are mute during the intervening years when licensees seek them out for referrals) and get someone from that local organization to sign a supporting affidavit, so that the bounty hunter's petition suddenly acquires a local burnish (necessary for standing purposes).

One broadcaster, who personally contacted the president of a local minority organization named in such a petition, learned the person who signed the document did not even hold the office stipulated. The actual president of the organization signed a declaration indicating he was a station

listener and had no complaints about the station's programming, hiring practices or public service in the community. That station, indeed, has a minority internship program that annually recruits high school students to work at the station part-time.

What often happens after the bounty hunter files a petition to deny is that they agree to withdraw their petitions in return for reimbursement of their "expenses" or payment for preparation of a supposed equal employment opportunity program. Several Texas broadcasters have provided me copies of such "programs" that amount to only a few pages of text outlining little more than what the station was already doing in contacting local minority organizations for referrals.

One station manager was told the petition against his station would be dropped if he paid the bounty hunter \$15,000. The manager/owner took out a bank loan and paid the bounty hunter, not knowing that withdrawal of the petition to deny would not terminate the FCC review process.

One station this year was asked for \$3,000. Eventually the station paid a bounty hunter \$1,500 for such a plan as part of an agreement that the lawyer would not press for a rehearing and harsher fine by the FCC.

The broadcasters, in effect, are forced to pay blackmail to the bounty hunters for their services in petitioning against the broadcasters' license. It is one thing for the government to require a business to pay an actual victim of discrimination. It is another thing entirely to have a governmental system that permits—and inherently encourages—third parties (persons and groups) who have not been harmed at all to derive income by filing petitions with the Commission.

The FCC should move swiftly to eliminate such blackmail by prohibiting reimbursement to bounty-hunting legal firms and third parties.

The forgoing is true and correct to the best of my knowledge and belief.

July 11, 1996

By



Ann Arnold

Executive Director